IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 485 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANBHAI M.CHAWDA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 485 of 1994

MS KJ BRAHMBHATT for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 23/06/2004

ORAL JUDGEMENT

Laxmanbhai M. Chawda, petitioner, has filed this petition under Article 226 of the Constitution of India

with a prayer to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing the respondents to extend all the benefits which are extended to other similarly situated employees including regularising the petitioner as per the continuous services rendered by the petitioner and in the light of the judgement of Service Tribunal in Appeal Nos. 19/83, 20/83 and 21/83.

2. The facts giving rise to this petition are as under:

2.1 The petitioner was appointed by respondent No. 1, the District Development Officer, as a work-charge clerk in its Roads and Building Department on 24.1.1980 in the pay scale of Rs. 260-400. It is the case of the petitioner that the respondents had also appointed other persons as the work charge clerks for the maintenance of roads and buildings. The petitioner was continued as such till 31.8.1981 and then he was discontinued.

2.2 It is the case of the petitioner other employees who were similarly situated namely Shri J.R. Chudasma, Shri J.D. Vaja and Shri J.K. Ranpura, were discontinued by the Government.

2.3 It is the case of the petitioner that said Shri Chudasma, Vaja and Ranpura had challenged the said action of the respondents before the Gujarat Civil Services Tribunal being Appeal Nos. 19 of 1983, 20 of 1983 and 21 of 1983 and the Service Tribunal by its common judgement and order dated 31.3.1983 allowed the appeals and directed the respondents to reinstate them in service as they were not properly discahrged from service on 6.9.1982 and to give their pay and allowance as if they had continued in service. The Tribunal has also observed that even some work charge clerks, senior to the appellants, namely, Shri Chudasama, Shri Vaja and Shri Ranpura were also discahrged who have not preferred any appeal and it was urged that the respondents may have to consider their claim also.

2.4 It is the case of the petitioner that after the Tribunal judgement, the petitioner approached the respondents and requested them to extend him the said benefits as given to Shri Chudasma, Shri Vaja and Shri Ranpura who were at serial Nos. 62, 74 and 61 respectively in the seniority list which has been published on 16.11.1983 which is at Annexure-B to the petition. It is the case of the petitioner that the petitioner continued to work from time to time as per the

orders issued by respondent No. 1, namely, from 24.1.1980 to 31.1.1981, 22.2.1987 to 3.10.1987, 10.10.1989 to 28.5.1990 and 10.4.1992 to 24.6.1992 purely on temporary and ad hoc basis. It was the case of the petitioner that though the petitioner is similarly situated like Shri Chudasama, Shri Vaja and Shri Ranpura, the respondents did not give him any benefits and therefore the present petition has been filed by the petitioner in October, 1993.

2.5 When the petition was filed this Court issued notice on 17.1.1994 and the same was admitted in December, 1994. As the matter was admitted, Mr. M.G. Jani, Executive Engineer, Roads and Buildings Division-I, Ahmedabad filed affidavit in reply dated 17.3.1997. It is the case of the respondents that the petitioner was a work-charge employee working on ad hoc basis depending upon the availability of work and funds and he was employed without following any procedure of recruitment and even names were called from the office of the Employment Exchange talukawise only. It was the case of the respondents that wages of the petitioner were paid from 2% work charge funds of the Project cost. It was stated that work charge employees referred to by the petitioner were employed as work charge prior to the petitioner. It was stated that Shri J.R. Chudasama was provided work on 23.1.1980 and Mr. Ranpura and Vaja were provided work on 21.1.1980 and 3.3.1980 respectively as work charge whereas the petitioner was entitled from 21.1.1980. Thereafter as there was no work available with respondent No. 2, they were terminated, namely, Mr. J.R. Chudasama on 7.9.1982, Mr. Ranpura on 7.9.1982 and Mr. Vaja on 7.9.1982 while the petitioner was terminated on 31.8.1981. It was the case of the respondents that they were all working in different places and at different projects. It was further stated that the appointments as work charge wagers were given on the projects of the concerned talukas at taluka level and the petitioner as well as above referred three employees were working in different talukas and they were also terminated on the basis of no work and no funds in the concerned talukas.

3. Mr. Munshaw, learned advocate for the respondents has invited my attention to the affidavit and stated that the claim of the petitioner that he was similarly situated like Mr. Chudasama, Mr. Ranpura and Mr. Vaja is not correct. He submitted that the appointments as work charge wagers were given on the projects of the concerned talukas at taluka level. If there is work the employees are continued and if there is

no work the employees are not continued. In view of the same, it is submitted by the learned counsel for the respondents that the case of the petitioner and other three employees who have filed cases before the Tribunal are not similarly situated. It is the case of the respondents that the petitioner was relieved in August, 1981 whereas the other three employees were relieved in September, 1982 and they have filed appeal before the Tribunal and the Tribunal has given some benefits to them. On the basis of the judgement of the Tribunal and the general observation made by the Tribunal, the petitioner is not able to get the advantage of the same because the petitioner has not filed appeal before the Tribunal and the case of the petitioner and the other three employees was altogether different and distinct.

Mr. Munshaw, learned counsel for the respondents further stated that the petition of the petitioner is liable to be rejected on the ground that the petitioner has not availed of the alternative efficacious remedy, namely, to approach the Service Tribunal or the Industrial forum under the Industrial Disputes Act and there is a gross delay because the judgement of the Service Tribunal is of 1983 whereas the petitioner has approached whereas the petitioner has approached this Court in 1994 and the petitioner has not approached this Court immediately and there is delay, laches, and acquiescence and on that ground the petitioner is not entitled to any relief.

I have considered the submissions made by the learned counsel for the parties. In my view once the respondents are able to show that the case of the petitioner and other three persons whose case was concerned by the Tribunal is distinct and different and they are working on different talukas, the petitioner is not entitled to any relief. In view of the same, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)

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